

United States District Court District of Massachusetts

UNITED STATES OF AMERICA,

v.

CRIMINAL NO. 2003-10383-RGS-01

JULIO FRANCO,
Defendant.

ORDER OF DETENTION PENDING TRIAL

COLLINGS, U.S.M.J.

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense)(state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
 - a crime of violence as defined in 18 U.S. C. §3156(a)(4).
 - an offense for which the maximum sentence is life imprisonment or death.
 - an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act, the Controlled Substances Import and Export Act, or the Maritime Drug Enforcement Act.
 - a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses.
- (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.
- (3) A period of not more than five years has elapsed since the (date of conviction)(release of the defendant from imprisonment) for the offense described in finding (1).

____ (4) Findings Nos (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonable assure the safety of (an)other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternative Findings (A)

X (1) There is probable cause to believe that the defendant has committed an offense.
X for which a maximum term of imprisonment of ten years or more is prescribed in
the Controlled Substances Act
under 18 U.S.C. §924(c).
____ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the safety of the community.

Alternative Findings (B)

X
XX (1) There is a serious risk that the defendant will not appear.
(2) There is a serious risk that the defendant will endanger the safety of
another person or the community if released.

Part II - Written Statement of Reasons for Detention

The defendant, although admitted for permanent residence, has very strong ties to the Dominican Republic. In fact, he has been living there since the arrest warrant was issued in this case three years ago. His wife and two children, although United States citizens, have also been living in the Dominican Republic. Although I have grave doubts that the defendant, by merely suggesting that the defendant be placed on electronic monitoring, met his burden of production, I shall assume without deciding that he has. However, I give great weight to the presumption contained in 18 U.S.C. § 3142(e) because the defendant closely resembles the Congressional paradigm. The Government's evidence appears strong and conviction is likely.

In short, facing likely conviction and an extended period of incarceration with few roots in the community and strong roots in a foreign country, there is a serious risk that the defendant will flee if released.

I find that there are no conditions or combination of conditions which will reasonably assure the defendant's appearance.

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appear. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the

United States marshal for the purpose of an appearance in connection with a court proceeding.

/s/ Robert B. Collings

ROBERT B. COLLINGS
United States Magistrate Judge

Dated: October 17, 2006.